

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
521 5th Avenue, Suite 1700
New York, New York 10175
(212) 292-4314
Allyson M. Smith (AS-4750)
Peter O. Hughes (admitted *pro hac vice*)
Attorneys for Defendant
Novartis Consumer Health, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SUE EARL, :
Plaintiff, : Hon. Richard M. Berman, U.S.D.J.
: Civil No.: 07 CIV 9595 (RMB)
v. :
NOVARTIS CONSUMER HEALTH, : DECLARATION OF
INC. : ALLYSON M. SMITH, ESQ. IN
: SUPPORT OF MOTION FOR
: SUMMARY JUDGMENT
Defendant. : Document Electronically Filed

Allyson M. Smith, being duly sworn, declares and says:

1. I am an attorney licensed to practice before this Court and an associate with the law firm of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., 521 Fifth Avenue, Suite 1700, New York, New York, 10017, attorneys for defendant Novartis Consumer Health, Inc. ("Consumer Health"), in the within matter. In my capacity as such and through personal involvement in the following matters, I have gained first-hand knowledge of them, except for those matters stated on information and belief, and as for them, I am so informed and believe them to be true. If properly called as a witness, I could and would so testify.

2. During my involvement with this case, I have obtained, prepared and reviewed numerous documents that have been produced throughout the course of the discovery process. Copies of several of these documents are attached and incorporated as exhibits hereto.

3. Attached and incorporated as Exhibit A is a true and accurate copy of Plaintiff's Complaint filed on October 26, 2007.

4. Attached and incorporated as Exhibit B is a true and accurate copy of Plaintiff's Response to Defendant's First Set of Request for Admissions.

5. Attached and incorporated as Exhibit C is a true and accurate copy of Plaintiff's EEOC Charge of Discrimination filed on or about May 24, 2005.

6. Attached and incorporated as Exhibit D is a true and accurate copy of the relevant portions of Plaintiffs' Memorandum of Law in Support of its Motion for Class Certification in the Velez matter filed on or about January 17, 2007.

7. Attached and incorporated as Exhibit E are true and accurate copies of the caption pages of the Complaint, First – Fourth Amended Complaints filed in the Velez matter.

8. Attached and incorporated as Exhibit F is a true and accurate copy of the relevant portions of Novartis Pharmaceutical Corporation's Answer to the Second Amended Complaint referring to Plaintiff in the Velez matter filed on or about July 25, 2005.

9. Attached and incorporated as Exhibit G is a true and accurate copy of the relevant portions of Novartis Corporation's Answer to the Second Amended Complaint referring to Plaintiff in the Velez matter filed on or about July 25, 2005.

10. Attached and incorporated as Exhibit H is a true and accurate copy of the relevant portions of the Second Amended Complaint referring to Plaintiff filed in the Velez matter on or about June 2, 2005.

11. Attached and incorporated as Exhibit I is a true and accurate copy of the relevant portions of the Third Amended Complaint referring to Plaintiff filed in the Velez matter on or about September 9, 2005.

12. Attached and incorporated as Exhibit J is a true and accurate copy of the relevant portions of the Fourth Amended Complaint referring to Plaintiff filed in the Velez matter on or about March 10, 2006.

13. Attached and incorporated as Exhibit K is a true and accurate copy of the relevant portions of Novartis Pharmaceutical Corporation's Answer to the Fourth Amended Complaint referring to Plaintiff in the Velez matter filed on or about March 20, 2006.

14. Attached and incorporated as Exhibit L is a true and accurate copy of the relevant portions of Novartis Corporation's Answer to the Fourth Amended Complaint referring to Plaintiff in the Velez matter filed on or about March 31, 2006.

15. Attached and incorporated as Exhibit M is a true and accurate copy of *Velez v. Novartis Pharmaceuticals Corporation*, 244 F.R.D. 243, 249 (S.D.N.Y. 2007 July 31, 2007).

16. Attached and incorporated as Exhibit N is a true and accurate copy of Defendant's Answer filed on or about February 25, 2008.

17. Attached and incorporated as Exhibit O is a true and accurate copy of Plaintiff's Motion for Leave to File an Amended Complaint filed on or about April 2, 2008.

18. Attached and incorporated as Exhibit P is a true and accurate copy of *Heard v. MTA Metro-North Commuter Railroad Co.*, - F. Supp. 2d. -, 2003 WL 22176008 (S.D.N.Y. Sept. 22, 2003).

19. Attached and incorporated as Exhibit Q, based on information and belief, are true and accurate copies of Plaintiff's resumes, produced to Defendant as EARL 000214 – EARL 000217.

20. Attached and incorporated as Exhibit R, based on information and belief, is a true and accurate copy of a letter authored by Plaintiff in 2002, produced to Defendant as EARL 000218 – EARL 000219

21. Attached and incorporated as Exhibit S, based on information and belief, is a true and accurate copy of Novartis Nutrition's Job Description for Plaintiff's position as an Account Manager, Acute Care, produced to Defendant as EARL 000264 – EARL 000267.

22. Attached and incorporated as Exhibit T, based on information and belief, is a true and accurate copy of Plaintiff's 2005 W-2 and Earnings Summary listing her employer as Novartis Nutrition Corp, produced to Defendant as EARL 000277 – EARL 000278.

23. Attached and incorporated as Exhibit U, based on information and belief, is a true and accurate copy of several thank-you letters from customers identifying

Plaintiff's employer as Novartis Nutrition, produced to Defendant as EARL 000162 – EARL 000167.

24. Attached and incorporated as Exhibit V is a true and accurate copy of *Hargett v. Metropolitan Transit Authority*, -- F. Supp.2d --, 2008 WL 1700143, p. 9 (S.D.N.Y. April 8, 2008).

20. Attached and incorporated as Exhibit W is a true and accurate copy of the Plaintiff's Objections and Responses to Defendant's First Set of Interrogatories dated May 23, 2008.

21. Attached and incorporated as Exhibit X is a true and accurate copy of the Defendant Consumer Health's Response to Plaintiff's First Set of Interrogatories dated June 2, 2008.

22. Attached and incorporated as Exhibit Y is a true and accurate copy of *Kellett v. Glaxo Enter.*, 1994 WL 669975, p. 5 (S.D.N.Y. November 30, 1994).

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 16, 2008

s/ Allyson M. Smith

Allyson M. Smith (AS-4750)

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